IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4646 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNKABHAI NARSINGBHAI MINAMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4646 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Dahod, vide order dated November 8, 2000, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of section 2 (c) of the Act as ten cases for commission of various offences under the Indian Penal Code and one offence under the Prohibition Act are registered against him which are pending trial and statements of seven anonymous witnesses in unregistered cases are recorded, according to the detaining authority, the activities of the petitioner are detrimental to the maintenance of public order and public health and by exercising powers under Section 9 (2) of the Act by not disclosing the identity of the witnesses, detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of mandamus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Subhadraben Patel, has restricted her arguments on the point of non-supply of legible copies of the documents referred to and relied upon by the detaining authority and supply of documents in English Language which is not known to the petitioner and submitted that it has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and infirmity in this regard is violative of the rights enshrined under Article 22 (5) of the Constitution of India and has prayed to quash and set aside the impugned order of detention by allowing the petition.

5. Mr. S.S. Patel, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. Affidavit in reply sworn by E.I. Kalaswa, District Magistrate, Dahod, is also filed. He, however, on verifying the record does not dispute the fact that some of the pages of the documents supplied to the petitioner are illegible and some of the documents supplied to the petitioner are in English Language. He, therefore, urged to pass appropriate orders in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also

perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. Similar question arise before this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the petitioner's right of making effective representation to the concerned authority and therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the present case, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution and hence the order of detention stands vitiated.

8. Applying the aforesaid principles laid down by this Court to the facts of the present case, in the instant case also it is clear that certain pages of some of the documents supplied to the petitioner are illegible and some documents supplied to the petitioner are in English Language which is not known to the petitioner. Therefore, it can be said that non-supply of legible copies of the documents referred to and relied upon by the detaining authority at the time of passing the impugned order of detention and by supplying of documents in a language which is not known to the petitioner i.e., English Language, the petitioner's right of making an effective representation to the concerned authority is adversely affected and therefore on this ground alone the petition deserves to be allowed and the impugned order of detention deserves to be quashed and set aside.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)